

DISTRICT OF NEVADA

Case No.: 3:20-cv-00157-WGC

Order

Re: ECF Nos. 1, 1-1

Defendant

complaint (ECF No. 1-1).

I. APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

A person may be granted permission to proceed in forma pauperis (IFP) if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: “Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant’s income, assets, expenses, and liabilities.” LSR 1-1.

1 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some
2 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
3 (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). A litigant need not “be
4 absolutely destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours &*
5 *Co.*, 335 U.S. 331, 339 (1948).

6 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;
7 therefore, the application is granted.

8 II. SCREENING

9 “[T]he court shall dismiss the case at any time if the court determines that-- (A) the
10 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails
11 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a
12 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

13 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
14 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)
15 tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the
16 court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668
17 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to
18 state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the
19 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under
20 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*,
21 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

22 The court must accept as true the allegations, construe the pleadings in the light most
23 favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*,

1 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less
2 stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9
3 (1980) (internal quotation marks and citation omitted).

4 A complaint must contain more than a “formulaic recitation of the elements of a cause of
5 action,” it must contain factual allegations sufficient to “raise a right to relief above the
6 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading
7 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
8 a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a
9 plaintiff should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at
10 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

11 A dismissal should not be without leave to amend unless it is clear from the face of the
12 complaint that the action is frivolous and could not be amended to state a federal claim, or the
13 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
14 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

15 Plaintiff’s complaint names Andrew Saul, Acting Commissioner of Social Security. It
16 appears that Plaintiff is requesting review of the Commissioner’s decision finding she is not
17 disabled. (ECF No. 1-1.)

18 Federal courts have sole jurisdiction to conduct judicial review of the Social Security
19 Administration’s determination in this regard. *See* 42 U.S.C. § 405(g). Upon a review of
20 Plaintiff’s complaint, it is unclear whether Plaintiff has exhausted her administrative remedies:
21 having an adverse decision by an ALJ, and then appealing the decision through the Appeals
22 Council and receiving a denial, making it the final decision of the Acting Commissioner and ripe
23 for suit in the district court.

1 The court will allow Plaintiff's complaint to proceed; however, Plaintiff shall notify the
2 court immediately if she has not exhausted her administrative remedies.

3 **III. CONCLUSION**

4 (1) Plaintiff's application to proceed IFP (ECF No. 1) is **GRANTED**. Plaintiff is
5 permitted to maintain this action without the necessity of prepayment of fees or costs or the
6 giving of security therefor. This order granting IFP status does not extend to the issuance of
7 subpoenas at government expense.

8 (2) The complaint shall **PROCEED**. The Clerk is instructed to **FILE** the complaint (ECF
9 No. 1-1).

10 (3) The Clerk shall **SERVE** the Commissioner of the Social Security Administration by
11 sending a copy of the summons and complaint by certified mail to: (1) Office of the Regional
12 Chief Counsel, Region IX, Social Security Administration, 160 Spear St., Suite 899, San
13 Francisco, CA 94105-1545; and (2) the Attorney General of the United States, Department of
14 Justice, 950 Pennsylvania Ave., N.W., Room 4400, Washington, D.C., 20530.

15 (4) The Clerk shall **ISSUE** a summons to the United States Attorney for the District of
16 Nevada and deliver the summons and a copy of the complaint to the U.S. Marshal for service to
17 the U.S. Attorney's Office at 400 S. Virginia Street, Suite 900, Reno, Nevada 89501.

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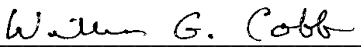
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1 (5) From now on, Plaintiff shall serve upon the defendant, or the defendant's attorney, a
2 copy of every pleading, motion or other document submitted for consideration by the court.
3 Plaintiff shall include with the original paper submitted for filing a certificate stating the date that
4 a true and correct copy of the document was mailed to defendant or defendant's counsel. The
5 court may disregard any paper received by a district judge, magistrate judge, or clerk which fails
6 to include a certificate of service.

7 **IT IS SO ORDERED.**

8 Dated: March 25, 2020

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William G. Cobb
United States Magistrate Judge
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